

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

TOKYO ELECTRON AMERICA, INC.,

Plaintiff,

v.

ANDREW DALE MILLER,

Defendant.

Case No.: 3:21-cv-01388-MO

PRELIMINARY INJUNCTION

This matter first came before the Court on September 20, 2021, on Plaintiff Tokyo Electron America, Inc.’s (“TEL”) Motion for Temporary Restraining Order and Preliminary Injunction. [ECF 3]. Attorney Christopher McCracken appeared on behalf of Plaintiff TEL. Defendant Andrew Dale Miller (“Mr. Miller”) did not appear.

On September 21, 2021 the Court issued a Temporary Restraining Order which granted the relief TEL sought by the Motion. On September 22, 2021 the Court instructed Mr. Miller to appear before the Court by October 1, 2021 and show cause why a preliminary injunction should not issue in accordance with the Temporary Restraining Order. [ECF 11].

On October 1, 2021, Mr. Miller appeared in writing, submitting a Response to Temporary Restraining Order and Request for Dismissal. [ECF 14]. On that same date, TEL submitted a Supplemental Brief [ECF 15] and a supplemental declaration in support, requesting issuance of a preliminary injunction. [ECF 16].

The Court has fully considered all materials filed in support of, and in opposition to, the Motion, as well the record herein. The Court finds as follows:

TEL has demonstrated the presence of a protectable interest in that Mr. Miller had access

to its trade secrets and other competitively sensitive and confidential business or professional information, and that TEL has a protectable contractual, goodwill and business interest in those materials;

TEL has demonstrated a likelihood of success on the merits, or, alternatively, the presence of serious questions going to the merits of TEL's claim that Mr. Miller, through his conduct, has or threatens to misappropriate or disclose its trade secrets or other confidential and proprietary information in violation of the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836(b), and that Mr. Miller, through his conduct, has breached or threatens to breach the terms of the Agreement for Confidential Information and Intellectual Property dated July 13, 2018, between TEL and Mr. Miller;

TEL has demonstrated a threat of irreparable harm by the misappropriation and disclosure of its trade secrets and other confidential business or professional information that outweighs the potential harm to Mr. Miller that would occur during the duration of this Preliminary Injunction;

TEL has demonstrated that the balance of the equities tips in its favor; and

TEL has established that the public interest in protecting trade secrets and confidential information and in enforcing valid contracts favors granting relief for the duration of this Preliminary Injunction.

Based on the foregoing, Mr. Miller's Request for Dismissal [ECF 14] is DENIED and that TEL's Motion for Preliminary Injunction [ECF 3] is GRANTED, as follows:

1. Confidentiality. Mr. Miller shall abide by the provisions of the Agreement for Confidential Information and Intellectual Property dated July 13, 2018, between TEL and Mr. Miller incorporated herein as Appendix A, and Mr. Miller shall not use, access, copy, or disclose in any manner TEL's Company Information or Company Property;

2. Return of Company Property. Mr. Miller shall immediately return to TEL all Company Property in his possession, including without limitation all security badges issued by

TEL (or by any TEL customer) to Mr. Miller, any TEL-issued telephone, and all copies of any documents, information, or data Mr. Miller has copied from the Company Property.

3. As used in this Preliminary Injunction, the term “Company Information” means all information, tangible or intangible, which is secret, confidential or proprietary in nature which concerns business or affairs of TEL, its customers or suppliers, including, but not limited to, inventions, trade secrets, ideas, programs, works of authorship, know-how, technical and business information, marketing and financial information, data, products, processes, developments, improvements, techniques, and plans.

4. As used in this Preliminary Injunction, the term “Company Property” means all of TEL’s property, including but not limited to Company Information, documents, data, records, apparatus, equipment, computer memories and other tangible items, including any copies thereof, containing the Company Information, which at any time came into Mr. Miller’s custody, or possession.

Dated this 4 day of October, 2021.

Michael W. Mosman

The Honorable Michael W. Mosman
District Court Judge